

§ 1.891

26 CFR Ch. I (4-1-04 Edition)

corporation must obtain the documentation required under that paragraph on or before March 11, 1993.

[T.D. 8432, 57 FR 41666, Sept. 11, 1992; 57 FR 49117, Oct. 29, 1992; 57 FR 60126, Dec. 18, 1992, as amended by T.D. 8657, 61 FR 9343, Mar. 8, 1996; 61 FR 14248, Apr. 1, 1996]

MISCELLANEOUS PROVISIONS

§ 1.891 Statutory provisions; doubling of rates of tax on citizens and corporations of certain foreign countries.

SEC. 891. *Doubling of rates of tax on citizens and corporations of certain foreign countries.* Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 802, 821, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

(Sec. 891 as amended by sec. 5(6), Life Insurance Company Tax Act 1955 (70 Stat. 49); sec. 3(f)(1), Life Insurance Company Income Tax Act 1959 (73 Stat. 140))

[T.D. 6610, 27 FR 8723, Aug. 31, 1962]

§ 1.892-1T Purpose and scope of regulations (temporary regulations).

(a) *In general.* These regulations provide guidance with respect to the taxation of income derived by foreign governments and international organizations from sources within the United

States. Under section 892, certain specific types of income received by foreign governments are excluded from gross income and are exempt, unless derived from the conduct of a commercial activity or received from or by a controlled commercial entity. This section sets forth the effective date of the regulations. Section 1.892-2T defines a foreign government. In particular it describes the extent to which either an integral part of a foreign sovereign or an entity which is not an integral part of a foreign sovereign will be treated as a foreign government for purposes of section 892. Section 1.892-3T describes the types of income that generally qualify for exemption and certain limitations on the exemption. Section 1.892-4T provides rules concerning the characterization of activities as commercial activities. Section 1.892-5T defines a controlled commercial entity. Section 1.892-6T sets forth the extent to which income of international organizations from sources within the United States is excluded from gross income and is exempt from taxation. Section 1.892-7T sets forth the relationship of section 892 to other Internal Revenue Code sections.

(b) *Effective date.* The regulations set forth in §§ 1.892-1T through 1.892-7T apply to income received by a foreign government on or after July 1, 1986. No amount of income shall be required to be deducted and withheld, by reason of the amendment of section 892 by section 1247 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2583) from any payment made before October 22, 1986.

[T.D. 8211, 53 FR 24061, June 27, 1988; 53 FR 27595, July 21, 1988]

§ 1.892-2T Foreign government defined (temporary regulations).

(a) *Foreign government—(1) Definition.* The term “foreign government” means only the integral parts or controlled entities of a foreign sovereign.

(2) *Integral part.* An “integral part” of a foreign sovereign is any person, body of persons, organization, agency, bureau, fund, instrumentality, or other body, however designated, that constitutes a governing authority of a foreign country. The net earnings of the governing authority must be credited

to its own account or to other accounts of the foreign sovereign, with no portion inuring to the benefit of any private person. An integral part does not include any individual who is a sovereign, official, or administrator acting in a private or personal capacity. Consideration of all the facts and circumstances will determine whether an individual is acting in a private or personal capacity.

(3) *Controlled entity.* The term “controlled entity” means an entity that is separate in form from a foreign sovereign or otherwise constitute a separate juridical entity if it satisfies the following requirements:

- (i) It is wholly owned and controlled by a foreign sovereign directly or indirectly through one or more controlled entities;
- (ii) It is organized under the laws of the foreign sovereign by which owned;
- (iii) Its net earnings are credited to its own account or to other accounts of the foreign sovereign, with no portion of its income inuring to the benefit of any private person; and
- (iv) Its assets vest in the foreign sovereign upon dissolution.

A controlled entity does not include partnerships or any other entity owned and controlled by more than one foreign sovereign. Thus, a foreign financial organization organized and wholly owned and controlled by several foreign sovereigns to foster economic, financial, and technical cooperation between various foreign nations is not a controlled entity for purposes of this section.

(b) *Inurement to the benefit of private persons.* For purposes of this section, income will be presumed not to inure to the benefit of private persons if such persons (within the meaning of section 7701(a)(1)) are the intended beneficiaries of a governmental program which is carried on by the foreign sovereign and the activities of which constitute governmental functions (within the meaning of § 1.892-4T(c)(4)). Income will be considered to inure to the benefit of private persons if such income benefits:

- (1) Private persons through the use of a governmental entity as a conduit for personal investment; or

- (2) Private persons who divert such income from its intended use by the exertion of influence or control through means explicitly or implicitly approved of by the foreign sovereign.

(c) *Pension trusts*—(1) *In general.* A controlled entity includes a separately organized pension trust if it meets the following requirements:

- (i) The trust is established exclusively for the benefit of (A) employees or former employees of a foreign government or (B) employees or former employees of a foreign government and non-governmental employees or former employees that perform or performed governmental or social services;
- (ii) The funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;
- (iii) The trust forming a part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered; and
- (iv) Income of the trust satisfies the obligations of the foreign government to participants under the plan, rather than inuring to the benefit of a private person.

Income of a pension trust is subject to the rules of § 1.892-5T(b)(3) regarding the application of the rules for controlled commercial entities to pension trusts. Income of a superannuation or similar pension fund of an integral part or controlled entity (which is not a separate pension trust as defined in this paragraph (c)(1)) is subject to the rules that generally apply to a foreign sovereign. Such a pension fund may also benefit non-governmental employees or former employees that perform or performed governmental or social services.

(2) *Illustrations.* The following examples illustrate the application of paragraph (c)(1).

Example 1. The Ministry of Welfare (MW), an integral part of foreign sovereign FC, instituted a retirement plan for FC's employees and former employees. Retirement benefits under the plan are based on a percentage of the final year's salary paid to an individual, times the number of years of government service. Pursuant to the plan, contributions are made by MW to a pension trust managed by persons appointed by MW to the extent actuarially necessary to fund accrued pension liabilities. The pension trust

in turn invests such contributions partially in United States Treasury obligations. The income of the trust is credited to the trust's account and subsequently used to satisfy the pension plan's obligations to retired employees. Under these circumstances, the income of the trust is not deemed to inure to the benefit of private persons. Accordingly, the trust is considered a controlled entity of FC.

Example 2. The facts are the same as in *Example 1*, except that the retirement plan also benefits employees performing governmental or social services for the following non-government institutions: (i) A university in a local jurisdiction; (ii) a harbor commission; and (iii) a library system. The retirement benefits under the plan are based on the total amounts credited to an individual's account over the term of his or her employment. MW makes annual contributions to each covered employee's account equal to a percentage of annual compensation. In addition, the income derived from investment of the annual contributions is credited annually to individual accounts. The annual contributions do not exceed an amount that is determined to be actuarially necessary to provide the employee with reasonable retirement benefits. Notwithstanding that retirement benefits vary depending upon the investment experience of the trust, no portion of the income of the trust is deemed to inure to the benefit of private persons. Accordingly, the trust is considered a controlled entity of FC.

Example 3. The facts are the same as in *Example 1*, except that employees are allowed to make unlimited contributions to the trust, and such contributions are credited to the employee's account as well as interest accrued on such contributions. Retirement benefits will reflect the amounts credited to the individual accounts in addition to the usual annuity computation based on the final year's salary and years of service. A pension plan established under these rules is in part acting as an investment conduit. As a result, the income of the trust is deemed to inure to the benefit of private persons. Accordingly, the trust is not considered a controlled entity of FC.

Example 4. (a) The facts are the same as in *Example 2*, except that MW establishes a pension fund rather than a separate pension trust. A pension fund is merely assets of an integral part or controlled entity allocated to a separate account and held and invested for purposes of providing retirement benefits. Under these circumstances, the income of the pension fund is not deemed to inure to the benefit of private persons. Accordingly, income earned from the United States Treasury obligations by the pension fund is considered to be received by a foreign government and is exempt from taxation under section 892.

(b) The facts are the same as in *Example 4(a)*, except that MW is a controlled entity of foreign sovereign FC. The result is the same as in *Example 4(a)*. However, should MW engage in commercial activities (whether within or outside the United States), the income from the Treasury obligations earned by the pension fund will not be exempt from taxation under section 892 since MW will be considered a controlled commercial entity within the meaning of § 1.892-5T(a).

(d) *Political subdivision and transnational entity.* The rules that apply to a foreign sovereign apply to political subdivisions of a foreign country and to transnational entities. A transnational entity is an organization created by more than one foreign sovereign that has broad powers over external and domestic affairs of all participating foreign countries stretching beyond economic subjects to those concerning legal relations and transcending state or political boundaries.

[T.D. 8211, 53 FR 24061, June 27, 1988; 53 FR 27595, July 21, 1988]

§ 1.892-3T Income of foreign governments (temporary regulations).

(a) *Types of income exempt—(1) In general.* Subject to the exceptions contained in §§ 1.892-4T and 1.892-5T for income derived from the conduct of a commercial activity or received from or by a controlled commercial entity, the following types of income derived by a foreign government (as defined in § 1.892-2T) are not included in gross income and are exempt:

(i) Income from investments in the United States in stocks, bonds, or other securities;

(ii) Income from investments in the United States in financial instruments held in the execution of governmental financial or monetary policy; and

(iii) Interest on deposits in banks in the United States of moneys belonging to such foreign government.

Income derived from sources other than described in this paragraph (such as income earned from a U.S. real property interest described in section 897(c)(1)(A)(i)) is not exempt from taxation under section 892. Furthermore, any gain derived from the disposition a U.S. real property interest defined in section 897(c)(1)(A)(i) shall in no event